C482 No. 910 of 2006

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the petitioners.

By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.), the petitioners have challenged the order dated 16.09.2006, passed by learned Sessions Judge restoration of the criminal Appeal No. 12 of 2004 was rejected.

Perusal of the impugned order and the papers on record, show that the said appeal was preferred by the petitioners under Section 449 of Cr.P.C. after the surety bonds, filed by them were forefeited for non-appearance of the accused. The said appeal appears to have been dismissed in default of the appellants (present petitioners) on 07.07.2005.

The restoration application, which was registered as criminal case No. 06 of 2005, was dismissed by the learned Sessions Judge on following grounds:-

1) There is no provision of restoration of the appeal in Cr.P.C.
2) The ground of restoration was found without substance.
3) In view of principle of law laid down in Ram Naresh Yadav Vs. State of Bihar, AIR 1987 Supreme Court 1500, the criminal appeal, filed by the convicts against the conviction and sentence are desired to be disposed of on merits even if the appellant is not present. But the same principle of law does not apply to the appeal, filed under Section 449 of Cr.P.C. by the sureties against forfeiture of the bonds.

In the above circumstances, there appears no illegality in the impugned order, which requires interference of this Court under Section 482 of Cr.P.C.

The petition is dismissed in limine.

(P.C. Pant., J.)

Dt: 18.11.06
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